

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
HELEN MARILYN MARION,) CASE NO. 05-67816 JPK
) Chapter 7
Debtor.)

ORDER ON MOTION TO REINSTATE BANKRUPTCY PETITION

On November 28, 2005, a hearing was held on the Motion to Reinstate Bankruptcy Petition ("Motion") filed by the debtor, by counsel, on November 18, 2005. The debtor appeared by counsel Visvaldis P. Kupsis.

The specific relief requested by the Motion is that "the Court reinstate above-named bankruptcy petition", and the Motion sets out the circumstances under which it is deemed appropriate by the movant for the Court to set aside its order entered on October 24, 2005 by which the debtor's Chapter 7 bankruptcy case was dismissed. There is no specific reference in the Motion, or in any other part of the record of the case, to any statute or rule under which the Motion is sought to be advanced.¹

The Court finds the facts to be the following. On October 14, 2005, the Court received an electronic transmission under the ECF registration of Attorney Visvaldis Kupsis. This transmission is recorded as entry #1 on the docket record identified as 05-67816-jpk. This transmission was comprised of one page and contained seven separate single-spaced entries, each apparently designating the name and address of a creditor or other party-in-interest in the debtor's case. Also on October 14, 2005, the Court received an electronic transmission under the ECF registration of Attorney Visvaldis Kupsis, designated as entry #2 on the foregoing record: this transmission was comprised of one page, a Form B 21 Official Form 21 "STATEMENT OF SOCIAL SECURITY NUMBER(S)" bearing the apparent original signature of Helen Marilyn

¹ Presumably, the Motion is premised on Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b), particularly Rule 60(b)(1) or Rule 60(b)(6).

Marion and a hand-written date of "10-14-05". Interestingly enough, both of these documents, when accessed by means of the hyperlinks on the record, have an entirely blue background, as if the original document was prepared on blue-tinted paper.

The original entry on the record with respect to entry #1 designated that entry to be a "Chapter 7 Voluntary Petition"; the original designation for entry #2 identified that document as an "Affidavit". The origin of these two entries was the designation attached to each of them by the electronic filer when the ECF submission was made by that filer to the Court. These entries merely reflect receipt of whatever it was that the electronic filer transmitted under those designations to the Court; the entries do not reflect what was in fact received on the Court's electronic record with respect to the substantive content of the transmission.

In the process of the Court's required quality control for its electronic dockets, the case administrator assigned to this record changed the docket record entries for the two October 14, 2005 transmissions to match the actual content of the received transmissions: entry #1 was modified on October 24, 2005 to state that the received transmission was a "Matrix" and not the "Chapter 7 Voluntary Petition" as designated by the electronic filer; entry #2 was modified on October 25, 2005 to state that the document actually received was a "Statement of SSN" as contrasted to the "Affidavit" identified by the electronic filer in the transmission of October 14, 2005. The October 14, 2005 receipted transmission was accompanied by an electronic credit transaction on Attorney Kupsis' account for the amount of \$209.00, which is the amount of the filing fee for a Chapter 7 case at the time the electronic record in this docket was opened.

In response to the transmission, the electronic system employed by the Court generated a document evidencing the Court's receipt of that electronic transmission. This document was electronically transmitted to Attorney Kupsis. This document is reproduced in full as "Exhibit 1" attached to this order. The electronic receipt for entry #2 is attached to this order as "Exhibit 2".

The record in this case was forwarded by the Clerk's Office to the undersigned presiding Judge on October 21, 2005, due to the fact that the record did not contain a bankruptcy petition.

By order entered on October 24, 2005, the case was dismissed; that order stated the following:

ORDER DISMISSING CASE

At Hammond, Indiana, on October 24, 2005.

This case was electronically filed on October 14, 2005, but the documents submitted did not include a voluntary petition for relief. As a result, the minimum requirements necessary to initiate a voluntary case, as established by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Official Forms, have not been fulfilled; the case should not have been filed and should, therefore, be dismissed. See N.D. Ind. L.B.R. B-1002-1.

IT IS THEREFORE ORDERED that this case is DISMISSED.

This order was electronically transmitted to Attorney Kupsis.

On October 25, 2005, a number of documents – docketed as docket entries #4, #5, #6, #7, #8, #9 and #10 – were received by electronic transmission from Attorney Kupsis, including a bankruptcy petition, entered as entry #10. On October 25, 2005, a record entry was made as entry #11, noting the receipt of the foregoing transmissions, and concluding with the statement "Case Dismissed on 10/24/05. Document cannot be processed." This entry was electronically transmitted to Attorney Kupsis.

On October 28, 2005, an electronic transmission was received from Attorney Kupsis, entered as entry #14. This transmission is a one-page "Certificate of Service", which states that a document designated as "Motion to Reinstate Bankruptcy Petition" had been electronically filed and had been distributed to: "U.S. Trustee" and "Trustee". As evidenced by the record, the Motion was not received by electronic transmission until November 18, 2005.

The Motion states that an attempt was made to electronically file a bankruptcy petition in this case on October 17, 2005, and that although debtor's counsel "had prior experience related to filing pleadings through the Federal Court system, . . . this was their first attempt to file bankruptcy petitions electronically with the bankruptcy court." Paragraph 4 of the Motion states that "counsel's secretary scanned in all the pages of the petition as one document in that she was not aware that only 25 pages at a time could be accepted by the system." Paragraph 5 states that

subsequent to the filing, debtor's counsel "received a confirmation page showing that the transaction had been completed and Debtor's counsel was unaware that all the pages were picked up by the electronic filing system." The foregoing comprises the pertinent part of the Motion with respect to the initial transmission; the balance of the Motion explains actions undertaken by debtor's counsel in response to information and directions received from the Clerk's Office.

The CM/ECF computer program used by the United States Bankruptcy Court for the Northern District of Indiana contains a limitation of 2 megabytes with respect to an electronically transmitted file. If a file in excess of this "volume" is made, the Court's system generates a notice to the transmitter that there was an error in processing the transmission; this notice includes information as to sources of assistance with respect to the transmission. Transmissions are received on the Court's system on an "all or nothing" basis. If the transmission exceeds the system's "volume" for acceptance, none of the transmission will be accepted into the Court's record, as contrasted to an acceptance into the record of the transmission to the extent of the accessible "volume". The transmission docketed as record entry #1 did not exceed the "volume" limitation, and thus it was accepted in full onto the Court's system. The same is true with respect to the transmission designated as entry #2.²

From the foregoing, the Court finds that no voluntary petition was ever transmitted to the Court on October 14, 2005 with respect to a debtor named Helen Marilyn Marion. The Court believes the explanation of Attorney Kupsis that it was his office's intent to transmit a voluntary

² The Court's technical support experts have been consulted as to the reason for each of the two documents being reproduced on a blue background. The best guess for this result is that the transmitter used a color scanner, and that the scanner was set either on "blue" or "color" when the PDF file comprised of each of those documents was created. The Court's Fifth Amended Order Authorizing Electronic Case Filing seeks to control for problems which might arise from this circumstance, by stating: "PDF document images must be filed in black-and-white or text formats only. Greyscale or color PDF document images shall not be filed electronically".

petition, and the Court also believes the representations of Attorney Kupsis that all documents necessary to commence a bankruptcy case were in fact in his possession on October 14, 2005, and that a good-faith attempt to transmit those documents to the United States Bankruptcy Court was made. However, the Court also finds that the fact that those documents were not in fact received by the Court is not attributable to a technical system failure on the part of the Court; rather, the fact that those documents were not received on October 14, 2005 by the Court is attributable to the internal processing of the transmitter's office, however diligently and correctly the attempt to transfer the required documents was made by that office.

The most critical document with respect to the initiation of a bankruptcy case is the petition. 11 U.S.C. § 301 states in pertinent part the following:

A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter.

Fed.R.Bankr.P. 1002(a) states that a "petition commencing a case under the Code shall be filed with the clerk". Fed.R.Bankr.P. 1005 states the formal requirements for the contents of the petition. Fed.R.Bankr.P. 1008 requires that a petition "shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746". Finally, Fed.R.Bankr.P. 9009 states the following:

The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate.

Official Form 1 (designated in the Official Forms as "FORM B1") is the form of a voluntary petition required to be used pursuant to Rule 9009.

Because of the critical importance of initial filings in relation to the opening of a case, pursuant to Fed.R.Bankr.P. 9029(a), the Court has promulgated, and the United States Court of Appeals for the Seventh Circuit has approved, N.D.Ind.L.B.R. B-1002-1, which in part pertinent to this case states:

(a) The minimum filing requirements necessary to initiate a voluntary case under title 11 of the United States Code are set forth in the Bankruptcy Code, the Federal Rules of Bankruptcy

Procedure, and the Official Forms. At the time of the adoption of these rules they require:

(1) The petition and, if the debtor has issued publicly-traded securities and is filing for relief under Chapter 11, exhibit "A" to the voluntary petition (11 U.S.C. § 301, Fed. R. Bankr. P. 1002 and Official Form 1);

(2) The appropriate filing fee, or, in an individual case, an application to either pay the filing fee in installments or, if the case is filed under Chapter 7, to waive that fee. (Fed. R. Bankr. P. 1006, Interim Bankruptcy Rule 1006(c));

(3) Any miscellaneous fee applicable to the case (28 U.S.C. § 1930(b) and Bankruptcy Court Fee Schedule);

(4) A list of all creditors or a schedule of liabilities or a motion, together with a notice of the motion, directed to the United States trustee, for an extension of time to file the required list (Fed. R. Bankr. P. 1007(a)); and

. . .

(b) The clerk may refuse to accept any case for filing which does not comply with the minimum filing requirements established by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Official Forms in effect at the time the case is presented for filing. If such a case is accepted for filing, it may be stricken by the court, *sua sponte*, without notice.

As the foregoing rules make clear, absent a petition, there is no validly commenced bankruptcy case. The reason for this is clear when one realizes that the petition is the document which invokes the Court's federal subject matter jurisdiction over the proceeding in relation to a particular debtor, particularly in view of the fact that 11 U.S.C. § 301 provides that the filing of the petition "constitutes an order for relief", which then automatically implements the automatic stay provisions of 11 U.S.C. § 362(a) which states that the petition itself invokes the operation of that statute. Absent a validly filed petition, there is no basis for a United States Bankruptcy Court to exercise any jurisdiction over the debtor, property of the debtor or of the debtor's estate, or any creditor or party-in-interest with respect to the debtor. Absent a petition, there is simply no bankruptcy case. Collaterally, absent the actual filing of a petition in some form, there is nothing to amend, and thus when a case record is opened without the filing of a petition, because there

never was a petition, a subsequent document which constitutes a petition does not comprise an "amendment" to anything.³

The requirement that a bankruptcy case be initiated by a petition in order to invoke the court's subject matter jurisdiction is parallel to the requirement that a complaint must be filed in a federal civil case in order to invoke a court's subject matter jurisdiction over the parties to, and subject matter of, an action initiated in federal court. Fed.R.Civ.P. 3 states: "A civil action is commenced by filing a complaint with the court." Absent the filing of a valid initiating document, a federal court has no jurisdiction with respect to anything; *In re Market Basket, Inc.*, 122 F. Supp. 321, 322 (W.D. Mo. 1954); *P.K. Family Restaurant v. Internal Revenue Service*, 535 F. Supp. 1223, 1224 (N.D. Ohio 1982); *Leboeuf, Lamb, Greene & Macrae, LLP v. Abraham*, 180 F. Supp.2d 65, 69 (D.D.C. 2001).

This matter, and the focus of the debtor's Motion to Reinstate Bankruptcy Petition, began and ended with the initial filing on the Court's docket. For whatever reason, no petition was ever received by the Court at the time the record designated as number 05-67816 was opened. As stated above, the Court's electronic filing system provides acknowledgment to an electronic filer that the Court received a transmission designated as whatever the electronic filer designated it; the receipt does not evidence the substantive content of the transmission. The Court has reviewed a number of matters in which the transmission as designated by the filer was not matched by the substantive contents of the transmission. The most common problem appears to be a totally inadvertent and innocent error by the transmitter with respect to the contents of the PDF file attached to a transmission. For this reason, the Court's CM/ECF training specifically

³ The Court encounters a number of errors as to form with respect to the initial voluntary petitions filed on its records. These errors include the failure to attach a scanned copy of the originally signed signature page, as required by paragraph 11(c) of the Fifth Amended Order Authorizing Electronic Case Filing, and since the inception of BAPCPA, the utilization of the former Form 1 petition instead of the Form 1 petition now applicable under the new law. These errors are potentially correctable by means of an amendment, because there is a petition document effective to invoke the Court's jurisdiction on the record.

emphasizes that prior to transmission of a PDF file to the Court, the transmitter should actually open the PDF file to make certain of its contents. A second check is easily made subsequent to the transmission by means of the transmitter's entering the CM/ECF system, accessing the record for which he/she received a transmittal receipt, and opening the docket record entry which contains the attempted transmission to make certain that the correct PDF file was actually received by the Court.

As stated above, the Court finds that the record in this case does not establish grounds provided for by paragraph 17 of the Fifth Amended Order Authorizing Electronic Case Filing. In addition, in a form of reverse, perverse way, Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b) does not provide a mechanism for relief because the Court never in fact had subject matter jurisdiction over the bankruptcy case in relation to the debtor; an order granting relief would be subject to a party-in-interest's motion pursuant to Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b)(4), correctly challenging the order granting the debtor's Motion as void for lack of jurisdiction; *see, Bally Export Corporation v. Balicar, Ltd.*, 804 F.2d 398, 400 (7th Cir. 1986), *rehearing and rehearing en banc denied*, (December 5, 1986).

IT IS ORDERED, for the reasons stated above, that the debtor's Motion to Reinstate Bankruptcy Petition filed on November 18, 2005 is denied.

IT IS FURTHER ORDERED that the opening of a docket record as designated case number 05-67816 is stricken from the Court's records, and that no order entered in this case shall be deemed a dismissal under 11 U.S.C. § 362(c)(3) as in effect on and after October 17, 2005.

Dated at Hammond, Indiana on January 5, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee

"EXHIBIT 1"

MIME-Version:1.0
From:ecf_innb@innb.uscourts.gov
To:CourtMail@innb.uscourts.gov
Bcc:vpkupsis@hotmail.com
Message-Id:<5246157@innb.uscourts.gov>
Subject:Ch 7 05-67816

"Voluntary Petition (Chapter 7)" Content-Type: text/html

*****NOTE TO PUBLIC ACCESS USERS***You may view the filed documents once without charge.
To avoid later charges, download a copy of each document during this first viewing.**

U.S. Bankruptcy Court

Northern District of Indiana

Notice of Bankruptcy Case Filing

The following transaction was received from Kupsis(DK), Visvaldis P. entered on 10/14/2005 at 11:56 AM
EST and filed on
10/14/2005

Case Name:

Case Number: 05-67816

Document Number: 1

Docket Text:

Chapter 7 Voluntary Petition. Fee Amount \$209 Filed by Helen Marilyn Marion. (Kupsis(DK), Visvaldis)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\Netfiles\Docs\FILES.VIS\MARION\ch7028.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1006806559 [Date=10/14/2005] [FileNumber=5246146-0] [0c25f18032e7e72ca643c6f594397a1b6b664ca78c51ebf91aa75e8dc1194e60c243463c1d82812ae21875ecd1be6626257a3adb78e85313a581ca86dc582de6]]

05-67816 Notice will be electronically mailed to:

Visvaldis P. Kupsis(DK) vpkupsis@hotmail.com
United States Trustee ustpreion10.so.ecf@usdoj.gov

05-67816 Notice will not be electronically mailed to:

"EXHIBIT 2"

MIME-Version:1.0
From:ecf_innb@innb.uscourts.gov
To:CourtMail@innb.uscourts.gov
Bcc: vpkupsis@hotmail.com
Message-Id:<5246487@innb.uscourts.gov>
Subject:Ch 7 05-67816

"Affidavit" Content-Type: text/html

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To avoid later charges, download a copy of each document during this first viewing.**

U.S. Bankruptcy Court

Northern District of Indiana

Notice of Electronic Filing

The following transaction was received from Kupsis(DK), Visvaldis P. entered on 10/14/2005 at 12:07 PM EST and filed on 10/14/2005

Case Name:

Case Number: 05-67816

Document Number: 2

Docket Text:

Affidavit Re: Filed by Helen Marilyn Marion without Certificate of Service (Kupsis(DK), Visvaldis)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\Netfiles\Docs\FILES.VIS\MARION\ss#.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1006806559 [Date=10/14/2005] [FileNumber=5246482-0] [89f9423295418280780574e1c54cdcc8b7d4c403cea6c91388476b3bdcbf70a01d44267dfd10789e22d7f7d55b2f90a649dc88affd092400078a55fd6162b4e1]]

05-67816 Notice will be electronically mailed to:

Nancy J. Gargula USTPRegion10.SO.ECF@usdoj.gov

Visvaldis P. Kupsis(DK) vpkupsis@hotmail.com

United States Trustee ustpreion10.so.ecf@usdoj.gov

05-67816 Notice will not be electronically mailed to: